IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2006

Coram

The Honourable Mr.Justice P.D.DINAKARAN
and
The Honourable Mr.Justice P.P.S.JANARTHANA RAJA

W.P.No.6743 to 6745, 6761, 8171 to 8186, 9592 to 9605 and 10438 to 10462 of 2000
and W.M.P.Nos.10078, 10080, 10084, 10099, 11937, 11940, 11943, 11946, 11949, 11952, 11955, 11958, 11961, 11964, 11966, 11969, 11973, 11976, 11979 and 11982 of 2000

W.P.No.6743 of 2000

The Management of
Cruickshank & Company Ltd.
154, Thambu Chetty Street,
Chennai-1. .. Petitioner in all the W.Ps.

vs.

1. The Appellate Authority under Payment of Gratuity Act, 1992 and Regional Labour Commissioner, (Central), Shastri Bhavan, Chennai.

2. The Controlling Authority under Payment of Gratuity Act, 1992 and Assistant Labour Commissioner (Central), Shastri Bhavan, Chennai.

3. M/s.T.Arumaidorai

4. M/s.Indian Potash Limited, No.727, Ambal Building, Anna Salai, Chennai.

5. M/s.Shaw Wallace & Company Limited, 154, Thambu Chetty Street, Chennai. .. Respondents 1 to 5 in all WPs

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

K. Ganesan ...6th Respondent in WP no. 6743/00
M.Karunakaran ... 6th Respondent in WP 6744/00
V.Vadamalai 6th Respondent in WP 6745/00
V.Kothandapani 6th Respondent in WP 6761/00
K. Murugaiayah 6th Respondent in WP 8171/00
M. Lakshmanan 6th Respondent in WP 8172/00
K.Ranganathan 6th Respondent in WP 8173/00
Mohan 6th Respondent in WP 8174/00
K.Mohan 6th Respondent in WP 8175/00
S. Shankar 6th Respondent in WP 8176/00
S. Joseph 6th Respondent in WP 8177/00
M. Ramachandran 6th Respondent in WP 8178/00
M. Murthy 6th Respondent in WP 8179/00
P. Subramani 6th Respondent in WP 8180/00
R. Karuppiah 6th Respondent in WP 8181/00
R. Vellaisamy 6th Respondent in WP 8182/00
G. Mahalingam 6th Respondent in WP 8183/00
M. Kannan 6th Respondent in WP 8184/00
S. Sambandamurthy 6th Respondent in WP 8185/00
G. Ayyavo 6th Respondent in WP 8186/00
S.G. Raju 6th Respondent in WP 9592/00
S. Arumugan 6th Respondent in WP 9593/00
K. Arumugam 6th Respondent in WP 9594/00
T. Ponnusamy 6th Respondent in WP 9595/00
S. CHANDRAN 6th Respondent in WP 9596/00
G. NAGU 6th Respondent in WP 9597/00
M. NAGARAJAN 6th Respondent in WP 9598/00
K. SHANMUGAM 6th Respondent in WP 9599/00
A. KARUPPIAH 6th Respondent in WP 9600/00
P. SANTHANAM 6th Respondent in WP 9601/00
K. SOMU 6th Respondent in WP 9602/00
M. KRISHNAN 6th Respondent in WP 9603/00
V. SUBRAMANI 6th Respondent in WP 9604/00
K. VENKATESAN 6th Respondent in WP 9605/00
ELUMALAI 6th Respondent in WP 10438/00
M. RENGAN 6th Respondent in WP 10439/00
M. KALAMANI 6th Respondent in WP 10440/00
C. PERUMAL 6th Respondent in WP 10441/00
K. GOLIAPPA 6th Respondent in WP 10442/00
A. MUTHU 6th Respondent in WP 10443/00
M. THOMAS 6th Respondent in WP 10444/00
M. CHANDRAN 6th Respondent in WP 10445/00
C. SUKUMAR 6th Respondent in WP 10446/00
C. DURAISAMY 6th Respondent in WP 10447/00
I. VINSING JAYAPAUL 6th Respondent in WP 10448/00
M. VEERAIAH 6th Respondent in WP 10449/00

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

P. Venkataprasad .. 6th respondent in WP.No.10450/2k

P. Muniyandi .. 6th respondent in WP.No.10451/2k

P. Ganesan .. 6th respondent in WP.No.10452/2k

M. Omadian .. 6th respondent in WP.No.10453/2k

S. Selvaraj .. 6th respondent in WP.No.10454/2k

S. Mahadevan .. 6th respondent in WP.No.10455/2k

M. Karuppiah .. 6th respondent in WP.No.10456/2k

S. Arumughan .. 6th respondent in WP.No.10457/2k

M. Paneerselvam .. 6th respondent in WP.No.10458/2k

M. Mani .. 6th respondent in WP.No.10459/2k

A. Murugesan .. 6th respondent in WP.No.10460/2k

G. Chandran .. 6th respondent in WP.No.10461/2k

A. Sathiah .. 6th respondent in WP.No.10462/2k

Prayers in all WPs:-

Petitions filed under Article 226 of the Constitution of India to issue a writ of certiorari to call for the records connected with the common order dated 29.2.2000 passed in PGA.Nos.13,5, 28, 4, 48, 3, 27, 31, 33, 37, 38, 39, 40, 41, 42, 44, 45, 47, 59, 60, 25, 57, 35, 34, 26, 29, 19, 18, 36, 14, 30, 32, 54, 53, 6, 49, 10, 61, 50, 7, 15, 9, 20, 43, 52, 23, 51, 22, 55, 16, 56, 17, 11, 57, 8, 12, 24, 26 and 46/77 on the file of the 1st Respondent Appellate Authority, confirming th order of the 2nd Respondent controlling Authority dated 19.8.1996 passed in G.A.Nos.75/94, 62/94, 8/94, 61/94, 23/95, 60/94, 67/94, 11/95, 13/95, 29/95, 2/95, 3/95, 4/95, 5/95, 6/95, 19/95, 20/95, 22/95, 71/94, 72/94, 55/94, 69/94, 15/95, 14/95, 56/94, 9/95, 49/94, 48/94, 16/95, 76/94, 10/95, 12/95, 17/95, 28/95, 63/94, 24/95, 57/94, 59/94, 25/95, 64/94, 77/94, 66/94, 50/94, 7/95, 27/95, 53/94, 26/95, 52/94, 18/95, 78/94, 68/94, 83/94, 73/94, 69/94, 65/94, 74/94, 54/97, 56/94 and 21/95 respectively and to quash the same.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

For Petitioner in all W.Ps. : Mr.R.Karthick for M/s.S.Ramasubramanian Associates

For Respondents in all W.Ps. : Mr.S.Karthick for M/s.T.S.Gopalan & Co. / R-4
: Mr.K.M.Ramesh for R-6 in all WPs

COMMON ORDER

I. - The issue

Whether the entitlement of contract labourers for gratuity can be dislodged or denied on account of tussle between the principal employer, who engaged the service of the contract labourers and the contractor, who employed the contract labourers is the issue that is projected for our consideration in these batch of writ petitions.

II. - Order under challenge

2. The petitioner has challenged the common order passed by the first respondent/Appellate Authority dated 29.2.2000 modifying the order of the second respondent/Controlling Authority, questioning the liability of the petitioner to the workmen, who are the contesting respondents herein, under the provisions of the Payment of Gratuity Act, under the following facts and circumstances of the case.

3. In this common order, the first and second respondent will be referred to as the appellate authority and the controlling authority respectively and the sixth respondent in each writ petitions will be referred to as 'the claimants' and the other parties will be referred to as the petitioner and respective respondents, for the sake of convenience.

III. Backdrop of the case

4.1. The petitioner is a company doing business in fertilizers, pesticides and liquor among other business and it is a subsidiary company of the fifth respondent. Petitioner was engaged by the fourth respondent by way of a contract for handling muriate of potash, which also includes receipt of bulk cargo at the Port of Madras and its standardisation, packing, stocking and its delivery to various customers of the fourth respondent. Petitioner, in turn, engaged third respondent on a contract basis to carry out the work assigned by the fourth respondent and the third respondent employed the claimants for the job work on his own. The claimants were paid by the third respondent.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4.2. After the termination of contract between the petitioner and the fourth respondent, the claimants filed application before the controlling authority claiming gratuity from the third respondent under the Payment of Gratuity Act.

4.3. Claimants filed common memo to implead the petitioner, fourth and fifth respondents, but before hearing them on the impleading memo, the controlling authority allowed the memo and issued notice of hearing to them. On contest, the petitioner filed counter stating that the claim is time-barred; that there was no claim against the petitioner in Form-N; that the claimants did not file any application for gratuity with the petitioner and that since the claimants were not employed by the petitioner, the claim of gratuity against the petitioner does not arise.

4.4. The controlling authority, after hearing the parties and on perusing the oral and documentary evidence, held that the claimants are 'employees' within the meaning of Section 2(e) of the Payment of Gratuity Act and hence, entitled to claim gratuity under Section 4 of the Payment of Gratuity Act. Initially, the second respondent held that the petitioner and the fourth respondent are jointly and severally liable to pay gratuity. But, later, the petitioner was directed to pay gratuity to the claimants with 10% simple interest from the date of termination of contract by the fourth respondent. In certain cases, the controlling authority also directed the petitioner to pay gratuity in excess of what has been claimed by the claimants themselves.

4.5. Petitioner, aggrieved by the order of the controlling authority, preferred appeals before the appellate authority, who insisted payment of gratuity, as directed by the controlling authority, for entertaining the appeals filed by the petitioner, against which, a writ petition was filed before this Court in W.P.No.1950 of 1997 and this Court, by order dated 21.6.99, directed the petitioner to deposit Rs.10 lakhs before the appellate authority and also directed the appellate authority to dispose of the appeals within two months from the date of deposit.

4.6. The petitioner deposited Rs.10 lakhs and in the meanwhile, 4th respondent also preferred appeals before the appellate authority against the order of the controlling authority. All the appeals were heard together and the appellate authority modified the order of the controlling authority by exonerating the fourth respondent from the liability on payment of gratuity to the claimants and held that the petitioner alone is liable to make the payment of gratuity.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

IV. Relief sought for

5. In the above facts and circumstances, the present writ petitions have been filed for issuance of Writs of Certiorari to call for the records connected with the common order dated 29.2.2000 passed in the respective appeals on the file of the first respondent Appellate Authority, confirming the order of the second respondent Controlling Authority dated 19.8.1996 passed in the respective applications and to quash the same.

V. - Grounds raised by the petitioner

6. The challenge made to the impugned order by the petitioner is on the following grounds:

(i) There is no primitive of contract between the petitioner and the claimants, who were engaged by the third respondent and therefore, there is no employer-employee relationship within the meaning of Section 2(e) of the Payment of Gratuity Act, as the petitioner has not engaged the claimants at any point of time;

(ii) The petitioner alone cannot be held responsible to discharge the liability of payment of gratuity to the claimants, as the ultimate beneficiary of the entire contract is the fourth respondent, who is the Principal Employer and hence, the fourth respondent as well as the third respondent, who engaged the claimants for the work assigned to him, should also be held responsible for discharging the liability; and

(iii) In any event, the petitioner company had already become defunct and it is not in a position to discharge the liability fully as directed by the first respondent.

VI. Contentions of contesting respondents

7. Per contra, Mr.K.M.Ramesh, learned counsel appearing on behalf of the claimants, argues for sustaining the order of the authorities below and has also filed memos dated 20.11.2006, the contents of which are common and the same read as follows:-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

MEMO FILED ON BEHALF OF THE WORKMEN VIZ., 6TH RESPONDENT IN EACH OF THE ABOVE WP's.

It is respectfully submitted that the 6th respondent in each of the above Writ Petitions being the workmen (Applicants before the Controlling Authority under the Payment of Gratuity Act) hereby agree to restrict their claim of gratuity to the sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) being the amount deposited by the Writ Petitioner as per order dated 21/06/99 made in W.P.No.1950 of 1997 and WMP Nos.3259 of 1997, 25604 and 25605 of 1998 towards the impugned order passed by the original authority, viz., Controlling Authority under the Payment of Gratuity Act, 1972, the 2nd respondent herein.

It is therefore prayed that this Hon'ble Court may be pleased to dispose of the above Writ petitions in the above terms and permit the workmen to withdraw the amount lying to the credit of the Controlling Authority with accrued interest if any towards full and final settlement in proportion to their respective claim and thus render justice.

Dated at Chennai this the 20th day of November, 2006.

sd/-

Counsel for 6th respondent in all W.Ps.

8. Mr.S.Karthick, learned counsel appearing on behalf of the fourth respondent, submits that even though the writ petitioner was engaged by the fourth respondent through the fifth respondent, the service of the claimants was not availed of either by the fifth respondent or by the writ petitioner or by the fourth respondent continuously. The learned counsel contends that the appellate authority rightly held that the controlling authority had erred in fixing the responsibility jointly and severally on the writ petitioner and the fourth respondent.

WEB COPY

VII. - Points for Consideration

9. We have given our anxious consideration on the rival submissions and also perused the orders of the authorities below as well as other records.

10. While the issue that arise for consideration in these batch of writ petitions is whether the entitlement of contract labourers for gratuity can be dislodged or denied on account of tussle between the principal employer, who engaged the service of

https://hcservices.ecourts.gov.in/hcservices/

the contract labourers and the contractor, who employed the contract labourers, incidentally, we are also constrained to decide the following issues:

(i) Whether the finding as to the relationship between the claimants, the contractor and the principal employer already arrived at by the authorities below based on the materials placed before them can be interfered with by way of a judicial review under Article 226 of the Constitution of India ? and

(ii) When the claimants are engaged under contract labour system, to what extent the principal employer is liable to pay the gratuity ?

VIII. - Findings and Conclusions

Part – I

Issue: " Whether the finding as to the relationship between the claimants, the contractor and the principal employer already arrived at by the authorities below based on the materials placed before them can be interfered with by way of a judicial review under Article 226 of the Constitution of India ?."

11.1. In the instant case, the appellate authority, appreciating the agreement entered into between the fourth respondent and the writ petitioner, which is the subsidiary company of the fifth respondent and that of the agreement between the writ petitioner and the third respondent, contractor, held that the fourth respondent had engaged the petitioner after entering into a contractual agreement fixing the sole responsibility for handling of the potash imported by them and thus, they had not engaged any workmen by themselves to carry out the job assigned by them to the petitioner and in turn, it is the petitioner company who engaged the claimants for carrying out the job assigned to it by the fourth respondent, of course, by creating thin veils through the name of the third respondent, T.Arumaidurai, who employed the claimants. Ultimately, the appellate authority held that if at all, the fourth respondent is liable, they are liable for payment of wages and for providing for welfare facilities as stipulated under the Provisions of the Contract Labour Act and not for the payment of gratuity, etc. Thus, the appellate authority has reached a finding that the controlling authority has erred in fixing the responsibility jointly and severally on the alleged two employers, i.e., M/s.Cruick Shank Co. Ltd., the petitioner herein and M/s.Indian

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Potash Ltd., the fourth respondent herein. The appellate authority had rendered a finding based on the materials available on record that the petitioner company alone engaged the claimants through the third respondent, contractor, for carrying out the job assigned to the petitioner and hence, the petitioner is the principal employer and thus, the petitioner alone is liable to settle the gratuity payable to the claimants.

11.2. In INDIAN OVERSEAS BANK v. I.O.B. STAFF CANTEEN WORKERS' UNION [(2000) 4 SCC 245], the Apex Court held as follows:-

> "... The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate,as long as they are based upon some material which are relevant for the purpose of even on the ground that there is yet another view which can reasonably and possible be taken."
>
> ...
>
> "The only course, therefore, open to the writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by the Supreme Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of its own, altogether giving a complete go-by even to the facts specifically found by the Tribunal below."

11.3. It is, therefore, a settled law that the High Court cannot embark upon the serious disputed questions of fact, on which the Industrial Court had already reached a finding, vide STATE OF KARNATAKA v. KGSD Canteen Employees' Welfare Assn., [(2006) 1 SCC 567].

11.4. Further, where the finding of the Labour Court that the dismissal of the workman from service by the management as justified, proper and lawful and the workman concerned was held to be not entitled to receive any benefit or relief was reversed by the High Court sitting in a writ jurisdiction, the Apex Court, while dealing with the scope of judicial review and interference in the award of Tribunal under Article 226 of the Constitution of India in AMRIT VANASPATI CO. LTD. v. KHEM CHAND [(2006) 6 SCC 325], held that the High Court while exercising powers under the writ jurisdiction cannot interfere with the factual findings of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the Labour Court, which are based on appreciation of facts adduced before it by leading evidence.

11.5. In view of the above settled proposition of law, once a finding had reached the finality before the authorities below, it may not be proper for this Court to scrutinise the employer-employee relationship existed between the petitioner and the third respondent or between the petitioner and the fourth respondent by way of a judicial review under Article 226 of the Constitution of India re-appreciating the evidence.

IX. - Findings and Conclusions

Part - II

Main Issue: " Whether the entitlement of contract labourers for gratuity can be dislodged or denied on account of tussle between the principal employer, who engaged the service of the contract labourers and the contractor, who employed the contract labourers ?

Incidental Issue: " When the claimants are engaged under contract labour system, to what extent the principal employer is liable to pay the gratuity ?

12.1. The above two issues are inter-related and hence, they are dealt with jointly.

12.2. Before proceeding further on the above two issues, it is apt to refer the legislative intention for enacting the Payment of Gratuity Act and the relevant provisions thereunder.

12.3. The Payment of Gratuity Act is intended to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto. The enactment of a Central law on the subject is to avoid different treatment to the employees of establishments having branches in more than one State when, under the conditions of their service, the employees are liable to transfer from one State to another.

12.4. The following definitions, as provided under Section 2 of the Payment of Gratuity Act, are relevant to be referred to.

2(e) - "employee" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfiled, plantation, port, railway

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity."

2(f) - "employer" means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop -

(i) belonging to, or under the control of, the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,

(ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority,

(iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfiled, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person."

2(s) - "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

12.5. The Apex Court in the case of LALAPPA LINGAPPA v. LAKSHMI VISHNU TEXTILE MILLS, SHOLAPUR (1981) 2 S.C.C. 238, held that in terms of existing definition of "continuous service" in section 2(c) of the Act, the permanent employees were not entitled to payment of gratuity for the years they remained absent without leave and had actually worked for less than 240 days in a year, which resulted in denial of gratuity to a number of employees whose short term absence had remained unregularised due to lack of appreciation of its significance for the purpose of working out their entitlement to gratuity and therefore, the definition with regard to "continuous service" has to be amended. Accordingly, the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

definition of "continuous service" has been amended as follows:

"2-A. Continuous Service – For the purposes of this Act, –

(1) An employee shall be said to be in continuous service for a period if he has, for that period, beein in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment, lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

(2) Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer –

(a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than –

(i) one hundred and ninety days, in the case of an employee employed below the ground in mine or in an establishment which works for less than six days in a week; and

(ii) two hundred and forty days, in any other case;

(b) for the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than –

(i) ninety-five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii) one hundred and twenty days, in any other case.

[Explanation. - For the purposes of clause (2), the number of days on which an employee has actually worked under an employer shall include the days on which –

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of an in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.]

(3) Where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five per cent, of the number of days on which the establishment was in operation during such period.

13.1. As the claimants were employed by the third respondent, contractor and their service was engaged by the fourth respondent, the principal employer, through the writ petitioner, which is the subsidiary company of the fifth respondent, under the contract labour system, it is inevitable to refer the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as 'the Contract Labour Act').

13.2. Some of the relevant definitions provided under Section 2(1) of the Contract Labour Act read as follows:-

(b) - "a workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer."

(c) - "contractor", in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor.

(g) - "principal employer" means -

(i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf,

(ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the factory under the Factories Act, 1948 (63 of 1948), the persons so named,

(iii) in a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named,

(iv) in any other establishment, any person responsible for the supervision and control of the establishment.

Explanation: - For the purpose of sub-clause (iii) of this clause, the expression "mine", "owner" and "agent" shall have the meanings respectively assigned to them in clause (j), clause (l) and clause (c) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);

(h) - "wages shall have the meaning assigned to it in clause (vi) of section 2 of the Payment of Wages Act, 1936 (4 of 1936);

(i) - "workman" means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person -

(A) who is employed mainly in a mangerial or administrative capacity; or

(B) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature ; or

(C) who is an out-worker, that is to say, a person to whom any articles or materials are given out by or on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of the principal employer and the process is to be carried out either in the home of the out-worker or in some other premises, not being premises under the control and management of the principal employer.

(emphasis supplied)

13.3. The Contract Labour Act has been enacted by the Parliament to regulate the employment for contract labour in certain establishments and to provide for the abolition in certain circumstances and for matters connected therewith and also to ensure that the labourer is paid with the prescribed wages and is

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

provided with other welfare benefits envisaged under the Contract Labour Act under the direct supervision of the principal employer, vide AIR INDIA STATUTORY CORPORATION, ETC. v. UNITED LABOUR UNION AND OTHERS [1997 (1) CLR 292 : 1997 (90) FJR 125]. The Contract Labour Act being an important piece of social legislation for the welfare of the labourers has to be liberally construed, vide SANKAR MUKHERJEE AND OTHERS v. UNION OF INDIA AND OTHERS [1989 (2) LLJ 953]. The Act subserves twin purposes, to wit, viz. (i) to abolish the contract labour; and (ii) to regulate the working conditions of contract labour wherever such employment is required in the interest of the industry. Appreciating the above twin purposes of the Contract Labour Act, it is held that engagement of contract labour has been found to be unjustified by a catena of decisions of the Supreme Court. When the work is of perennial nature and instead of engaging regular workmen, the system of contract labour is resorted to, it would only be for fulfilling the basic purpose of securing monetary advantage to the principal employer by reducing expenditure on work force. It would obviously be an unfair labour practice and is also an economically short-sighted and unsound policy, both from the point of view of the undertaking concerned and the country as a whole. Such a system was tried to be put to an end by the Legislature by enacting the Act but when it found that there are certain activities of establishment where the work is not of perennial nature then the contract labour may not be abolished but still it would be required to be regulated so that the lot of the workmen is not rendered miserable. The real scope and ambit of the Act is to abolish contract labour system as far as possible from every establishment, vide AIR INDIA STATUTORY CORPORATION, ETC. v. UNITED LABOUR UNION AND OTHERS [1997 (1) CLR 292 : 1997 (90) FJR 125].

13.4. It is, therefore, clear that the Contract Labour Act envisages regulation as well as abolition of the contract labour. In other words, even though the object of the Act is to abolish the contract labour, it also intends to regulate the employment of the contract labourers in certain establishments so long as the contract labour is not perennial in nature and therefore, to that extent the Act recognises the continuance of the system of contract labour in a regulated manner and in some areas it is allowed to exist, of course, without compromising the underlying policy of the Contract Labour Act to abolish contract labour wherever possible and practicable and where it cannot be abolished altogether, the policy of the Contract Labour Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provision of essential amenities. It is, therefore, clear that the rights and benefits conferred on the workmen employed by a contractor under the provisions of the Contract Labour Act are clearly intended to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

ensure basic, human dignity to the workmen and if the workmen are deprived of any of these rights and benefits to which they are entitled under the provisions of the Contract Labour Act, the principal employers are made statutorily responsible for securing such rights and benefits to the workmen, vide PEOPLE'S UNION FOR DEMOCRATIC RIGHTS AND OTHERS v. UNION OF INDIA AND OTHERS [1982 (2) LLJ 454]. In the said background, the provisions of the Contract Labour Act should be given widest possible interpretation in regard to the words used, otherwise, it would be a violent injustice to the Act and consequently, any narrow pedantic approach would not be justified. It is a trite law that unless the widest possible meaning and amplitude is offered to the provisions of the Contract Labour Act, the entire legislation would lose its efficacy and contract labour would be left on the mercy of the intermediary and the same is the situation in the instant case.

14.1. In the light of the above provisions, we proceed to decide the above two issues, viz., whether the entitlement of contract labourers for gratuity can be dislodged or denied on account of tussle between the principal employer, who engaged the service of the contract labourers and the contractor, who employed the contract labourers and when the claimants are engaged under contract labour system, to what extent the principal employer is liable to pay the gratuity.

14.2. In this regard, it is relevant to refer Section 21(4) of the Contract Labour Act, which reads as follows:-

> "21. Responsibility for payment of wages. -
> (1) ....
> (2) ....
> (3) ....
> (4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor. "
>
> (emphasis supplied)

14.3. Since the appellate authority had already rendered a finding that the petitioner alone is the principal employer in view of Section 21(4) of the Contract Labour Act, even though the third respondent, contractor, fails to make the payment of wages, the principal employer is liable to pay the wages in full or the unpaid balance due as the case may be, to the claimants employed by the third respondent, contractor and recover the amount so

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

paid from the third respondent, contractor, either by deduction from any amount payable to the third respondent, contractor under any contract or as a debt payable by the third respondent, contractor.

14.4. The next question that arises for consideration is whether the wages liable to be paid by the principal employer includes gratuity. To decide the above question, we are constrained to refer the definition of wages as defined under Section 2(1)(h) of the Contract Labour Act, 1970. As per Section 2(1)(h) of the Contract Labour Act, 1970, the wages shall have the same meaning as to Section 2(vi) of the Payment of Wages Act, 1936. It is a settled rule of interpretation that incorporation of an earlier Act into a later Act is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into the later. When an earlier Act or certain of its provisions are incorporated by reference into a later Act, the provisions so incorporated become part and parcel of the later Act as if they had been 'bodily transposed into it'. The effect of incorporation is admirably stated by Lord Esher, M.R. : 'If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act as if they had been actually written in it with the pen, or printed in it. Even though only particular sections of an earlier Act are incorporated into the later, in construing the incorporated sections it may be at times necessary and permissible to refer to other parts of the earlier statute which are not incorporated. As was stated by Lord Blackburn: 'When a single section of an Act of Parliament is introduced into another Act, I think it must be read in the sense it bore in the original Act from which it was taken, and that consequently it is perfectly legitimate to refer to all the rest of that Act in order to ascertain what the section meant, though those other sections are not incorporated in the new Act, vide Justice G.P.Singh, in his Principles of Statutory Interpretation.

14.5. In this connection, it is apt to refer Section 2(vi) of the Payment of Wages Act, 1936, which reads as follows:-

> " 2 (vi) - "wages" means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes -
>
> (a) any remuneration payable under any award or settlement between the parties or order of a Court;

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) any sum which by reason of the termination or employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force,

but does not include -

(1) any bonus (whether under a scheme of profit-sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;

(2) the value of any house-accommodation, or of the supply of light, water, medical attenddance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;

(3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(4) any travelling allowance or the value of any travelling concession;

(5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; and

(6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).

(emphasis supplied)

14.5. The meaning for the word 'wages' as defined in Section 2(1)(h) of the Contract Labour Act, 1970, is traceable to Section 2(vi) of the Payment of Wages Act, 1936. Consequently, to decide whether the wages liable to be paid to the contract labourers, the claimants herein, under the provisions of the Contract Labour Act, 1970, includes gratuity, a harmonious reading of Section 2(vi)(d) and sub-clause (6) of Section 2(vi) of the Payment of Wages Act, 1936, is inevitable. Of course, an argument is possible by superficial reading and narrow interpretation of clause (6) of Section 2(vi) of the Payment of Wages Act to contend that the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

wages do not include gratuity. A combined reading of Section 2 (vi)(d) and sub-clause (6) of Section 2(vi) results in a legal/statutory fiction, which compels the Court to believe something to exist which in reality does not exist. A legal/statutory fiction is nothing but the presumption of the existence of the state of affairs which in actuality is non-existent. The effect of such legal/statutory fiction is that a position which otherwise would not obtain is deemed to obtain under the circumstances, vide Gajraj Singh & Ors. V. State Transport Appellate Tribunal [(1997) 1 SCC 650]. It is a well-known principle of construction that in interpreting a provision creating a legal fiction, the Court has to ascertain for what purpose the fiction is created and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corrollaries to give effect to the fiction, vide State Of Maharashtra v. Laljit Rajshi Sha & Ors. [(2000) 2 SCC 699]. But, on a conjoint reading of Section 2(vi) (d) and sub-clause (6) of Section 2(vi) and by virtue of legal/statutory fiction created in sub-clause (6) of Section 2(vi) exempting the benefits conferred under clause(d) within the purview of gratuity that is excluded from the meaning of wages under sub-clause (6) and the gratuity claimed by the claimants herein being a welfare benefit created and payable by operation of law under the provisions of the Payment of Gratuity Act which are included under clause(d) of Section 2(vi) of the Payment of Wages Act within the meaning of wages payable to the contract labourers, it would be the basic responsibility of the petitioner to make payment of gratuity to the claimants in full or in part as per Section 21(4) of the Contract Labour Act, of course, without prejudice to the right of the petitioner to recover the same from the third respondent, contractor, even though the initial responsibility to make such payment of gratuity lies with the third respondent, contractor, as the welfare legislations such as

(i) Payment of Wages Act, 1936;

(ii) Contract Labour (Regulation and Abolition) Act, 1970; and

(iii) Payment of Gratuity Act, 1972,

are to be interpreted liberally and in widest possible construction in favour of the labourers, the claimants herein. Therefore, for deciding whether the wages payable to the claimants includes gratuity within the meaning of Contract Labour Act, 1970, whereunder the definition of wages is traceable to the definition of wages in the Payment of Wages Act, 1936 and the centrifugal issue whether the gratuity payable under the Payment of Gratuity Act is protected under Section 2(vi)(d) of the Payment of Wages Act, 1936, in spite of exclusion under sub-clause (6) of Section 2 (vi) of the Payment of Wages Act, 1936, we are constrained, as a rule of interpretation, to refer the object and reasons of the legislative intention of all the three statutes, referred to above

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

and the scope and ambit of the provisions contained thereunder and are satisfied that the gratuity being a benefit created and payable by operation of law under the provisions of the Payment of Gratuity Act, 1972, is protected within the definition of wages for having included under clause (d) of Section 2(vi) of the Payment of Wages Act, 1936. Therefore, the Court has to give full effect to the legal/statutory fiction and such fiction has to be carried to its logical conclusions, as any other view would only frustrate the legislative intention of all the enactments.

15. In fact, the same was the view of a learned single Judge of this Court in MADRAS FERTILISERS LTD. v. CONTROLLING AUTHORITY UNDER PAYMENT OF GRATUITY ACT (2003-I-LLJ-854), wherein the learned single Judge, interpreting the meaning of wages as defined under Section 2(vi) of the Payment of Wages Act, in the context of Section 21(4) of the Contract Labour Act, held that wages includes gratuity payable under law, viz., Payment of Gratuity Act, by holding as hereunder:-

> "23. ..... The very language of sub-clause (6) suggests that any gratuity which is not covered by clause (d) is excluded from the term "wages". This would presuppose that clause (d) covers some gratuity. Which would that gratuity be is the moot question to be answered. The answer is to be found in the plain language of clause (d) which opens with the words "any sum which by reason of the termination of employment of the person employed is payable under any law, ...". There can be no dispute that the termination of employment of respondents 4 to 41 entitled them to receive the payment of gratuity under the law called Payment of Gratuity Act. This clause is complete in itself and, therefore, it can be safely held that the gratuity which is payable under the Payment of Gratuity Act is well covered under clause (d). Learned senior counsel, however, suggests that the subsequent clause starting from the words "contract or instrument" suggests that such law, contract or instrument should not provide for the time within which the payment is to be made and in fact, there is a time limit prescribed in the Payment of Gratuity Act. In my view, such cannot be the import of the last clause. The last clause qualifies only the "contract or instrument" because of the user of the word "provides". Now if the letter "s" is added to the word "provide", it would be only when there is the user of singular subject as against the plural subject. The phrase "contract or instrument", because of the existence of the word "or" would become a singular and, therefore, the verb will have to be used

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

with the addition of the letter "s". But such would not be the position if the word "law," is also to be added. It will then become "law and contract or instrument" in which case, the verb will have to be used as if the subject is plural. Therefore, it is clear that the clause starting from the word "contract" and ending with the word "is to be made" is an independent clause and the qualification given in that clause is only for "contract or instrument" and not for "law". The plain meaning of the clause would be that where any sum is payable on termination of employment of the person under any law (in this case Payment of Gratuity Act), it would be covered under clause (d) and, therefore, it excluded from the operation of sub-clause (6) and therefore will amount to "wages". Once this construction is accepted, it is clear that it will be the basic responsibility, under Sec.21(4) of the Contract Labour Act, of the petitioner to make the payment of gratuity and the petitioner will have a right to recover that sum from the third respondent contractor because, according to me, the initial responsibility to make the payment of gratuity lies with the third respondent contractor."

16. But, however, since the learned counsel appearing on behalf of the claimants, has filed memos to the effect that the claimants agree to restrict their claim to the tune of Rs.10,00,000/- (Rupees ten lakhs only), which amount has already been deposited by the petitioner herein before the appellate authority, and in view of the finding of the appellate authority, which cannot now be disturbed, that the fourth respondent is not liable to pay, it is suffice to accept the memos filed on behalf of the claimants and discharge the writ petitioner on the liability of the balance amount while confirming the finding of the appellate authority that the fourth respondent is not liable for any payment of gratuity.

X. - Result

17. In result, the writ petitions are disposed of as follows:-

(i) The finding as to the relationship between the claimants, the contractor and the principal employer already arrived at by the authorities below based on the materials placed before them cannot be interfered with by way of a judicial review under Article 226 of the Constitution of India;

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(ii) The entitlement of contract labourers for gratuity cannot be dislodged or denied on account of tussle between the principal employer, who engaged the service of the contract labourers and the contractor, who employed the contract labourers;

(iii) The issue, viz., when the claimants are engaged under the contract labour system, to what extent the principal employer is liable to pay gratuity, is answered as hereunder:

(a) The sixth respondent in all the writ petitions, viz., the claimants herein, are permitted to withdraw their eligible amount of gratuity proportionately on the amount of Rs.10,00,000/- already deposited by the writ petitioner before the authorities below;

(b) The writ petitioner is not liable to pay any more amount than what was deposited and thus, stands discharged from the rest of the liability;

(c) The fourth respondent is not liable to pay any amount towards the payment of gratuity; and

(d) The writ petitioner is at liberty to work out his rights against the third respondent, contractor, as provided under Section 21(4) of the Contract Labour Act independently.

No costs. Consequently, all the connected W.P.M.Ps. are closed.

sra

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To

1. The Appellate Authority under
   Payment of Gratuity Act, 1992
   and Regional Labour Commissioner,
   (Central), Shastri Bhavan,
   Chennai.

2. The Controlling Authority under
   Payment of Gratuity Act, 1992 and
   Assistant Labour Commissioner
   (Central), Shastri Bhavan,
   Chennai.

+ 56 ccs to M/s. S. Ramasubramaniam & Associates SR Nos.56842 to 56845 & 56847

+ 1 ccs to Mr. K. M. Ramesh, Advocate SR No. 56425

+ 1 cc to M/s. T. S. Gopalan & Co Advocate SR no. 56334

JE(CO)
NM,SR/11.1.2007

W.P.Nos.6743 of 2000, etc. batch

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/